

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 26

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte SATISH KUMAR GAGGAR and FUH-SHENG CHEN

Appeal No. 1999-2488  
Application No. 08/841,027

ON BRIEF

before KIMMIN, GARRIS, and PAWLICKOWSKI, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 1-4 and 6-10 in the status of the examiner of all claims - and to an amendment accepted in the final rejection. There are no other claims remaining in the application.

On January 19, 2000, the patent "Surveillance System,"

The subject matter on appeal relates to a method for improving heat/humidity aging resistance of a flame retardant thermoplastic composition. Further details of this appealed subject matter are set forth in representative independent claim 9 which reads as follows:

9. A method for improving heat/humidity aging resistance of a flame retardant thermoplastic composition, comprising the steps of:

- (a) providing an aromatic polycarbonate resin present at a level of from 60 to 90 percent by weight based on the total weight of the composition,
- (b) providing a vinyl aromatic-unsaturated nitrile-diene rubber graft copolymer present at a level of from 3 to 15 percent by weight based on the total weight of the composition,
- (c) providing a vinyl aromatic-unsaturated nitrile rigid resin present at a level of from 1 to 10 percent by weight based on the total weight of the composition,
- (d) providing a phosphate present at a level of from 3 to 15 percent by weight based on the total weight of the composition; and
- (e) adding a tetrahydrofuran polymer pigment at a level of from 1 to 5 percent by weight based on the total weight of the composition, wherein said diene rubber or said aromatic polycarbonate is present at a level of from 1 to 10 percent by weight based on the total weight of the composition whereby said composition will have improved heat and humidity aging resistance.

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Application No. 08-641,027

The references set forth below are relied upon by the examiner as evidence of obviousness:

Buyssch et al. (Buyssch)	4,883,835	Nov. 18, 1989
Gosens et al. (Gosens)	5,204,394	Apr. 20, 1993
Yang et al. (Yang)	5,643,931	Jul. 1, 1997
		Filed Nov. 1, 1994

All of the claims on appeal are rejected under 35 U.S.C. § 103(a) as being unpatentable over Yang, Gosens and Buyssch.

We refer to the brief and to the answer (as well as to the first office action mailed August 11, 1997 as paper no. 11 to which the answer refers) for a complete exposition of the opposing viewpoints expressed by the appellants and by the examiner concerning the above noted rejection.

#### OPINION

For the reasons which follow, we will sustain this rejection.

On page 6 of the brief, the appellants state that "it [the trial witness] illustrates the composition identified by the examiner to be novel and nonobvious against the instant invention, comprising the particular components of the instant invention

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As indicated by the appellants on page 7 of the brief, "the claims of an appeal all stand in full together." Accordingly, in assessing the merits of the above noted rejections, we will, if necessary,

"composition." Consistent with the representations made in this appeal, the appellants then go on to argue that the applied references contain no teaching or suggestion to remove the diphosphate fire retardant or the low molecular weight halogen containing fire retardant of the Yang and Buysch compositions respectively in order to thereby obtain their inventive composition wherein only one fire retardant component, namely, a monophosphate fire retardant, is used. These arguments are unpersuasive.

This is because, contrary to the appellants' apparent belief, the subject matter on appeal simply is not limited in the manner argued in the brief. Specifically, neither of the appealed independent claims excludes diphosphate fire retardant or low molecular weight halogen containing fire retardant or limits the recited composition to only one fire retardant component as implicitly presupposed by the appellants' arguments. In this regard, we emphasize that the appealed independent claims do not employ the term "composition" and instead the claims relate to fiber slippage elements or materials said to be at least partially a diphosphate fire retardant and low molecular weight halogen containing fire retardant. In re Baxter, 61 F.3d 672, 65,

Appeal No. 1974-14  
Applicant: N.Y. Tech., Inc.

Moreover, it is appropriate to clarify certain incorrect limitations of fact made by the appellants in presenting their appealed arguments. First, neither of the independent claims on appeal purport that matter any of the dependent claims. An appeal requires that the phosphate component of the composition recited in the here claimed method constitute a monophosphate tire retardant as the appellants seem to believe. Additionally, the appellants are clearly incorrect in stating that Gossens' composition does not include a copolymeric resin of the type here claimed (i.e., the resin recited in step (c) of the independent claims). This resin is unambiguously disclosed as a component of Gossens' composition in lines 1-29 of column 4.

Finally, the appellants present the following argument on page 11 of the brief:

The Examiner's statement that "[a]ll of applicants claim limitations are met" is erroneous because of Appellants' clause reciting "whereby said composition retains about 50% of the original impact strength after one week aging at 100° F. in a 50% humidity." Appendix, claim 1. Note that the Applicants' attorney's may have omitted this limitation.

Initially, it is appropriate to point out that appellants' independent claim 10 contains no recitation concerning such "limitations." In any event, we submit that clearly the "claim 10" limitation is not limited to the "one week aging at 100° F. in a 50% humidity" limitation.

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Application No. 08/641,327

composition of the ingredients defined by independent claim 1 at concentrations which encompass or overlap the claim concentrations. Therefore, the composition products defined by appealed claim 1 and disclosed by Yang or Buysch appear to be identical or substantially identical.

Where, as here, the claimed and prior art products are identical or substantially identical, the Patent and Trademark Office can require an applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his claimed product. Whether the rejection is based on "inherency" under 35 U.S.C. § 102, on "prima facie obviousness" under 35 U.S.C. § 103, jointly or alternatively, the burden of proof is the same, and its fairness is evidenced by the inability of the Patent and Trademark Office to manufacture products or to obtain and compare prior art products. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977).

The trial board's statement of fact and conclusion that "the claimed product is not inherently or necessarily different from the prior art products" does not mean that the prior art products necessarily or inherently possess the appended claim characteristics or "inherently" possess the appended claim characteristics "or inherently." Under consideration, in the instant case, it is reasonable to believe that the prior art

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Application No. 08/641,327

characteristics as the mere claimed composition in light of the aforementioned ingredient/concentration commonalities. Under these circumstances, the appellants' mere argument to the contrary must be considered unpersuasive. Id.

For the above stated reasons, we hereby sustain the examiner's Section 103 rejection of all appealed claims as being unpatentable over Yang, Gosens and Buysch.

App. No. 1927-1486  
App. No. 1927-1487

The question in the examination is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR 1.114(b).

AFFIRMED

Edward Kimlin  
EDWARD J. KIMLIN  
Administrative Patent Judge

  
BRADLEY R. GARRIS  
Administrative Patent Judge

Beverly A Pawlikowski  
BEVERLY A. PAWLICKOWSKI  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

1400-1401

Report No. 100-2483  
Application No. 257541, or

100-2483  
THE PLASTICINE  
LINE PLASTICINE AVE.  
LITTLFIELD, MA 01251



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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**DATE MAILED:**

**NOTICE OF ABANDONMENT**

This application is abandoned in view of:

- Applicant's failure to timely file a proper response to the Office letter mailed on \_\_\_\_\_.
- A response (with a Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_, which is after the expiration of the period for response (including a total extension of time of \_\_\_\_ month(s)) which expired on \_\_\_\_\_.
- A proposed response was received on \_\_\_\_\_, but it does not constitute a proper response to the final rejection.
- (A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC).)
- No response has been received.
- Applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.
- The issue fee (with a Certificate of Mailing or Transmission of \_\_\_\_\_) was received on \_\_\_\_\_.
- The submitted issue fee of \$ \_\_\_\_\_ is insufficient. The issue fee required by 37 CFR 1.18 is \$ \_\_\_\_\_.
- The issue fee has not been received.

Applicant's failure to timely file new formal drawings as required in the Notice of Allowability.

Proposed new formal drawings (with a Certificate of Mailing or Transmission of \_\_\_\_\_) were received on \_\_\_\_\_.

The proposed new formal drawings filed \_\_\_\_\_ are not acceptable.

No proposed new formal drawings have been received.

The express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on \_\_\_\_\_.

The letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest or all of the applicants.

The decision by the Board of Patent Appeals and Interferences is final and binding because the period for seeking court review of the decision has expired and there are no allowed claims.

The reason(s) below:

PETER SZEKELY  
PRIMARY EXAMINER